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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Butte)

In re B. H., a Person Coming Under the
Juvenile Court Law.

BUTTE COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J. H.,

Defendant and Appellant.

C067959

(Super. Ct. No.
J35158)

J. H., father of the minor, appeals from orders denying him visitation after the court placed the minor in long-term foster care. (Welf. & Inst. Code, §§ 366.26, 395.) Appellant contends the court abused its discretion in denying any visitation, including supervised visitation, because the necessary predicate

finding of detriment was not supported by substantial evidence. The evidence established that the father had been convicted of felony child abuse (Pen. Code, § 273, subd. (a)) in 2004 and unlawful intercourse with a child (Pen. Code, § 261.5) in 2005. He was placed on parole with a condition that he have no contact with children.

We shall affirm the judgment.

FACTS

The Butte County Department of Employment and Social Services (Department) filed a petition in February 2010 alleging the newborn minor came within the provisions of section 300 due to the mother's neglect and failure to protect the minor from the father who had been convicted of sexual (Pen. Code, § 261.5) and physical (Pen. Code, § 273d) abuse of other minors. The court ordered the minor detained and sustained the petition following the parents' submission based on the social worker's report. The court found the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) applied.

Although the detention and jurisdiction orders permitted appellant reasonable visitation, a condition of appellant's parole prevented him from doing so until April 1, 2010. After the condition was lifted, appellant declined a request to drug test and did not seek to visit the minor.

In February 2010, appellant's parole officer told the social worker appellant was constantly in violation of his parole and recently tested positive for methamphetamine. The parole officer believed appellant was likely to reoffend with

minors and should not be around them. Based on appellant's criminal acts and the statements of his parole officers, the social worker recommended the court find visitation with appellant would be detrimental to the minor. The social worker further recommended denial of services to both parents.

By the end of June 2010, appellant was in local custody and remained there at the time of the disposition hearing. The court denied services to both parents, found visitation would be detrimental to the minor, terminated appellant's visitation and set a selection and implementation hearing. Appellant challenged the orders denying him services by filing a petition for extraordinary writ but did not challenge the visitation order.¹

The social worker's report for the selection and implementation hearing recommended a permanent plan of adoption. The current caretaker was not interested in adoption, however on further inquiry, the caretaker was willing to be the minor's guardian. Before the hearing, there were some problems in the caretaker's home and the social worker changed the recommendation to long-term foster care with a goal of

¹ On our own motion we take judicial notice of the petition appellant filed in case No. C065899 in which he challenged the order denying services and the evidentiary support for the order. The petition was summarily denied October 7, 2010, pursuant to *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501.

guardianship. The case plan included a generic recommendation for supervised visits for the parents.

Prior to the selection and implementation hearing in March 2011, appellant was transported to High Desert State Prison in Susanville. At the hearing, the court adopted the social worker's recommendation for long-term foster care placement and ordered visitation for the mother. The court inquired about visitation for appellant. Appellant's counsel requested visitation be available subject to the best interest of the minor. The minor's counsel and the tribal representative indicated that the court had previously found visitation to be detrimental to the minor and the Department agreed such an order was made at the disposition hearing. The court found visits with appellant detrimental to the minor, terminated visitation and stated that when appellant was released from custody, he could return to court and ask for visitation.

DISCUSSION

Appellant argues the juvenile court abused its discretion in denying even supervised visitation after ordering the minor to remain in long-term foster care.

The power to regulate visitation between parents and dependent minors rests with the court. (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1557-1558.) The juvenile court has great discretion in deciding visitation issues and we will not disturb the juvenile court's decision absent an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

When adoption is not selected as a permanent plan and the minor is continued in long-term foster care, visitation remains an issue. Thus, when ordering continued foster care: "The court shall also make an order for visitation with the parents . . . unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child." (Welf. & Inst. Code, § 366.26, subd. (c)(4)(C).)

At the disposition hearing, the court found visitation between appellant and the minor was detrimental. The finding was supported by appellant's parole officer's opinion that appellant was at high risk to reoffend against children, appellant's criminal history and his continued substance abuse. Further, by the disposition hearing, appellant was in state prison hours away from the infant minor's home. Visits, if allowed by the facility, would require lengthy transport to and from the facility for the minor to visit a person he did not know. Substantial evidence supported the juvenile court's finding that visitation would be detrimental at disposition. Appellant did not challenge that finding.

Six months later, appellant was still in state prison and nothing had changed. The facts which supported the original order terminating visitation were still in place, with the possible exception of ongoing substance abuse. The court recognized that, until appellant was released, the facts were unlikely to change. The juvenile court did not abuse its

discretion in continuing to find visitation detrimental to the minor.

DISPOSITION

The orders of the juvenile court are affirmed.

BLEASE, Acting P. J.

We concur:

HULL, J.

DUARTE, J.